Supreme Court, U.S.
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In the

Supreme Court of the United States

October Term, 2000

ANTONIO C. (ANONYMOUS),

Petitioner,

-against-

In the Matter of Department of Social Services, County of Nassau (New York) o/b/o Jacqueline C., Anthony W. & Alexander C. (Anonymous), children under the age of eighteen years adjudicated to be Neglected,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT

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4808

QUESTION PRESENTED

1. Whether, the Family Court of New York State, County of Nassau, violated Petitioner's equal protection and due process rights guaranteed to him in Article 1 §§ 6 & 11 of the New York State Constitution and the 5th, 6th and 14th amendments of the United States Constitution when it did not permit him to confront and question a witness.

LIST OF THE PARTIES

All the parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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Law Guardian for Jacqueline C.,
Anthony W., Alexander C. (Anonymous)
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Attorney for Leslie H. (mother, anonymous)
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OPINIONS BELOW

The opinion of the New York State Supreme Court, Appellate Division, Second Department, is officially reported as *In the Matter of C. (Anonymous) children. Department of Social Services, respondent; Leslie H.(Anonymous), et al., appellants.* 710 N.Y.S.2d 530 (2nd Dep't. 2000), and appears in Appendix A hereto at App. 1. The decision of the New York State Family Court,

1. The decision of the New York State Family Court, which is not officially reported, appears in Appendix B hereto at App. 4.

JURISDICTION

The judgment of the Appellate Division, Second Department was entered on June 12, 2000. Antonio C.'s (Anonymous) Motion for permission to appeal to the New York State Court of Appeals pursuant to N.Y.Civ. Prac. L. & R. 5602(a)(1) was denied sua sponte on September 12th, 2000. The denial is reported as *In the Matter of C. (Anonymous) children. Department of Social Services, respondent; Leslie H. (Anonymous), et al., appellants, Dated 12th of September 2000, as Motion No. 787.* The Order of Dismissal appears in Appendix C hereto at App. 12 . In accordance with Rule 13.1 of this court, this petition is filed within 90 days of the date of denial of discretionary review (leave to appeal). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)(1988) because the judgement of the Appellate Division sought to be reviewed draws into question the validity of a Statute and procedures of the State of New York on the ground of there being repugnant to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 5th Amendment provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The 6th Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of

Counsel for his defense.

The 14th Amendment, Section 1 provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The New York State Family Court Act (McKinney's) Article 10 § 1046 (a) (vi) provides:

> § 1046 Evidence (a) (vi): previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence, but if uncorroborated, such statements shall not be sufficient to make a fact-finding of abuse or neglect. Any other evidence tending to support the reliability of the previous statements, including, but not limited to the types of evidence defined in this subdivision shall be sufficient corroboration. The testimony of the child shall not be necessary to make a fact-finding of abuse or neglect; and ...

The New York State Family Court Act (McKinney's) Article 10 § 1046 (b) provides:

> § 1046 Evidence (b): In a fact-finding hearing (I) any determination that the child is an abused or neglected child must be based on a preponderance of the evidence; and...

STATEMENT OF THE CASE

This case concerns the alleged sexual abuse of infants, seven and four and two years of age, respectively. The abuse was not witnessed by a competent adult. The Court, during the abuse hearing, interviewed only one of the infants. A law guardian, who was permitted to be present and cross-examine the infant during the Court's interview, represented the infants. The law guardian's cross-examination was arguably suggestive and leading. Respondent and his attorney were not permitted to be present during the interview or cross-examination. In addition, over objection, the Respondent and his attorney were denied access to the substantive matters obtained during the Court's interview. The Respondent was found by a preponderance of the evidence to have sexually abused the infants. He has been substantially deprived of his children since the trial.

A. Statement of Facts (From the transcripts of the hearing)

On February 9, 1995 the Respondents, Leslie H. and Antonio C. (Anonymous) [herein after "Appellant"],

who were in a relationship at the time, appeared before the Hon. Murray Pudalov in Nassau County Family Court. The children of the relationship include Jacqueline C (DOB: 2/9/93) and Alexander C (DOB: 4/27/90). Anthony W[1]. (DOB: 2/3/88), the son of Leslie H. by a prior marriage/relationship, also lived with the family. The matter on before the Court concerned a removal of all the children from the marital home pursuant to section 1022 of the Family law.

A temporary order was entered providing for supervised visitation by both parents. At the hearing, the law guardian assigned to the case indicated she had no objection to the mother visiting with the children, but objected to the father visiting with the children. The Deputy County Attorney adopted the law guardian's position. Antonio C's attorney objected, raising the issue that the allegations of the instant abuse charges arose from second hand sources. In rebuttal, the Law Guardian for the children, proffered that she had direct knowledge from Anthony W. that Antonio C. had placed his penis into the mouth of Anthony W. and "peed" in it, leading the Law Guardian to infer that he had ejaculated into the child's mouth. Antonio C. vigorously denied the allegations.

The Court adjourned the proceedings for two weeks to permit the Department of Social Services [hereinafter "DSS"] to develop a plan for the case. The Court further indicated it was inclined to accept the recommendation of the law guardian indicating that there is "...presently an outstanding temporary order

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[1] Anthony W is the stepbrother of Jacqueline C and Alexander C. All children share the same biological mother.

which the Court will continue in that the Court does not feel at this time the father should have visitation." Prior to adjourning the matter, the Court ordered that the children be examined by a competent psychologist, psychiatrist MD, and someone familiar with these matters.

On February 28, 1995 the parties appeared before Judge Murray Pudalov pursuant to his direction. The medical professionals as previously ordered by the Court did not examine the children. Further, it was indicated that the Respondents were directed to see a counselor at the Nassau County Medical Center for evaluation, but when Antonio C. called, the counselor's wanted $48.00, which he could not afford. The matter was adjourned to March 15, 1995.

The parties next appeared before the Court on March 22, 1995. On that date the Department of Social Services [hereinafter DSS] reported that it attempted to obtain psychiatric examinations of the children involved but the agencies called by the DSS refused, indicating that it was unnecessary. The Court thereafter set April 26, 1995 as the day for Trial, continuing all orders that were in place.

The matter appeared on the Court's April 26, 1995 calendar and was notified that Antonio C. was arrested on an unrelated matter and was presently in the Nassau County Correctional Facility. On this date the Respondent Leslie H. consented that a finding of Neglect be entered against her in the matters pending before the Court, indicated in the record as "5N, 5J, 5K". Specifically, that under "5J" she neglected the children she was caring for by failing to exercise a minimum degree of care and by repeatedly engaging in domestic

violence in the presence of the children including six incidents dating back to January 15, 1991 which required police intervention. Under "5K" that on November 3, 1994 Respondent mother and father threatened each other with knives in the presence of the children during which the mother picked up one of the children in self defense. And under "5N", the Respondent, Leslie H., hit said child Anthony W. as punishment with tree branches and thereby used excessive corporal punishment. Thereafter a Dispositional hearing regarding Leslie H. was set for July 25, 1995 and the Trial of the matter against Antonio C. was scheduled for May 12, 1995.

On May 12, 1995 the abuse matter appeared on the Court's calendar. Again, the aforementioned psychiatric examinations of the children had not been accomplished. The Court indicated in the record, "....I can tell you that this case was adjourned sometime for the purpose of having an evaluation done and I specifically requested it. Apparently, it's not been done and I'm not going to adjourn this case for another eight weeks to go off and evaluate." The Court indicated it would interview the child *in camera* and permitted the Law Guardian for the children to be present and cross-examine the infant. Antonio C.'s attorney was not permitted to be present during the Court's interview and the law guardian's cross-examination. The attorney for Antonio C. objected to the Court's interview of the child.

Thereafter, the Attorney for Antonio C. made an application to the Court to adjourn the matter to obtain a validation report from a psychologist. The Court indicated it would not delay the case any further and elected to go forward with the *in camera* interview of the child in the abuse case. The attorney for Antonio C. took

exception to the Court's ruling.

***In Camera* interview with Anthony W. with only the Law Guardian present. The infant stated that he did not know what it meant to tell the Truth!**

This was the Court's first and only interview with Anthony W. The Court initially asked basic demographic questions, such as name, age, and class in school. The infant was then asked if he knew what it meant to tell the truth. He responded that he did not. He was asked if he knew what it was to tell a lie. He responded that he did not. After further inquiry, the infant was again asked, "you don't know what it is, to tell the truth?" and the infant stated "I don't know".

The Court asked the child if Antonio C., "did something with you?" and the child indicated that he would not tell the Court. Thereafter the Law Guardian attempted to interview the infant and again he would not talk.

After a short pause in the proceedings [2], the interview continued. After the pause, the law guardian continued the questioning. With further probing by the Law Guardian, asking pointedly leading and suggestive questions, the infant related that he saw Antonio C. "hump" Alex.; He indicated that "Hump" means "on top". That Antonio "humps" mommy; that he put "it" in my mouth; that the "it" was identified as a "penis; that Antonio C. put his penis into his daughter Jacqueline's [3]

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[2] The length of time or duration of the pause is not noted in the record.

[3] The infant was two years old at the time of this alleged occurrence.

mouth and touched her; that he put his penis in his step brother Alex's mouth and caused him to cry.

At the end of the interview, the Court asked the witness "is this the truth or a fib?" and the witness said, "I don't know".

Thereafter, in open Court, the attorney for Antonio C. wanted to hear the statements made by the child in chambers and the Court denied him the transcripts and reiterated that he would not make the record available, except on appeal.

The Abuse Trial of DSS v. Antonio C.: (May 16, 1995)[4]

The Deputy County Attorney called Denise Powell as the first witness. Ms. Powell is the sister of Leslie H., the co-respondent herein and has known Antonio C. for five years. The children that are the subject of the proceedings are currently residing with Ms. Powell and have been since December 31, 1994. She testified that she witnessed Alexander C. (age 5) "humping his hand" and she interpreted that to mean "like he was having sex with his hand. Powell indicated the infant learned it from his father. Powell also indicated that she called a Ms. Fingerman of Child Protective Services and reported the incident.

Powell thereafter indicated that a few years back, Antonio C. would touch Anthony's genitals. It was not clearly defined under what circumstances Antonio C. touched the infant's genitals. Anthony was two or three years old at the time. At the time of this occurrence

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[4] The record incorrectly dates the trial as commencing on May 16, *1996*, in lieu of May 16, *1995* when it occurred.

Powell testified that Leslie H. was present. Powell witnessed this touching on "one occasion."

The testimony continued with Powell indicating she witnessed Leslie H. and Antonio C. fighting with knives in the summer of 1994. Powell related that during the fight, Anthony W. was between Antonio C. and Leslie H. She further related that Antonio had a pocketknife that flicks out of the handle. Powell allegedly witnessed Antonio C. pointing the knife at Leslie H. and there was yelling and screaming going on with the infant Anthony W. juxtaposed between them. However, no person was injured in the occurrence.

Ms. Powell related that she witnessed many acts of domestic violence between Leslie H. and Antonio C. and that the children were always present. Denise Powell further testified that Alexander C. told her that his father, Antonio C. "had been humping him" and that Antonio C. had put his penis in his mouth. Alexander was four years old at the time. She testified that the children, back at her house, started "humping" pillows, and indicated they indicated to her that that was what Antonio C. was doing. Ms. Powell told of a time that Anthony W. told her that "Mr. C. was rubbing up and down and how white stuff came out and got all over him". With regard to the incidents related above, Ms. Powell indicated that she told the Doctors in the Nassau County Medical Center of the occurrences.

On cross-examination by Respondents attorney, Ms. Powell admitted she was the children's main caretaker while Leslie H. was in jail. Further that the time period Powell related the five incidents took place, summer of 1994, Antonio C. was in Jail. If fact, he was incarcerated from February to October of 1994. She

further admitted not knowing the exact dates of the incidents. Powell testified that Anthony W. had a different father than the two other children and the Antonio C. treated him differently. She testified that Antonio C. hit Anthony W. in the head with a frying pan.

The witness was cross-examined by the Law Guardian for the children. The witness testified that Anthony W. had observed Leslie H. and Antonio C. having oral sex. She also indicated that she saw Antonio C. smoking reefers in front of the children. Powell also testified that after Leslie H. had been released from jail she sat down with her in her apartment and the children told Leslie H. what Antonio C. had done. In addition, Powell related that the children were going to therapy at a clinic and that Leslie H. accompanied the children.

The next witness to testify was Winifred Jeanne Eubanks, a State Worker II. She is employed by the Nassau County Department of Social Services and has held that position for twenty-four years. She is assigned to the "Ongoing Supervision" unit of the Department and was assigned to the case in October 1994. She had received an Investigation conducted by the Investigation Unit of the Department of Social Services that warranted on going supervision because of Domestic Violence and sex abuse. Eubanks first interviewed the children in January. She was present with a co-worker therapist [Ms. Edmond]. When she first spoke to Alexander he was four years old. Interviews at the Department of Social Services were not fruitful, but when Eubanks went to Denise Powell's home, Anthony W. talked to her in front of Denise Powell. He related that Antonio C. had put his "penis" into his mouth. She indicated the child stated it's all lumpy in my mouth". In addition, Eubanks stated

that Anthony W. characterized the material as "it's white and greenish" and that these events took place about 10 times. Further testimony by Eubanks uncovered that Anthony W. related to her that he had observed Antonio C. place his finger in Jacqueline C.'s vagina.

Eubanks testified that she spoke to Alexander C. on January 14 while at Denise Powell's home. In addition, Eubanks related that she interviewed both Leslie H. and Antonio C. in February, after she interviewed the children. Leslie H. acknowledged that Antonio had touched little Alexander's penis when he was small, but did not believe there were any sexual connotations associated with the touching. In an interview with Antonio C., he denied all allegations raised by the children.

On cross-examination by Antonio C.'s attorney, he obtained from the witness Eubanks that she referred the children to sexual abuse counseling. Eubanks indicated the clinic's purpose was to test for *physical* abuse. She admitted that a validator was never sent to determine whether or not *sex abuse* had taken place.

Eubanks also admitted under cross-examination that the Clinic *did not find any signs of physical abuse* .

> *Q. Do you know whether or not they found anything?*
> *A. They did not.*
> *Q. Do you know whether or not they found anything physical on Anthony or Alex?*
> *A. No*

The Court asked Eubanks if she was satisfied that the children were telling the truth and she answered

affirmatively.

The next witness to testify was Stephanie Lesk. Ms. Lesk indicated that she is an "intern psychologist" at South Nassau Community Hospital. Lesk indicated she was in the doctoral program at Hofstra University. She proffered that she had completed all of her course work in the program and that she expected to be done within a year. The doctorate is in Clinical Psychology. She received her under graduate degree in psychology from the George Washington University and worked with special education children and children with attention deficit disorder. She further indicated she worked in the capacity as a Therapist for the past 10 months in her training program.

Lesk testified that she was assigned to Anthony W. two months prior to the trial date. The medical record of Anthony W. was marked in Evidence as Exhibit 1 and the medical record of Alexander C. as Exhibit 2.

Medical Record of Alexander C.: Exhibit 2, in Evidence: The records in the Family Court Clerks office, and contained within the Record on Appeal, reflect the following information. First, there were 22 pages submitted concerning Alexander C., including the Certification page, signed by Thomas DeMara, of the Mental Health Counsel Center, South Nassau Community Hospital. In his certifying letter, he indicates that Alexander's record contains pages 001 to 022. The next sheets in the record reflect, South Nassau Community Hospital - Mental Health Outpatient Services, Hargale, at the top, and the next line indicates "C. Alexander" followed by the next line, which indicates it is "Intake 2/9/95". The intake sheet identifies the informant for the intake as "Denise

Powell", Alexander's maternal aunt. At the end of the document is a "Summary" indicating, in part, "Alex is a 4 year old *alleged* victim of incestuous activity". Thereafter, there is a "Diagnostic Impression" which reflects "AXIS I: Adjustment disorder with mixed emotional features; Developmental Articulation disorder, and at AXIS IV: *Alleged Incest History*; Alleged History of Neglect". Further in the records of Alexander C., there are observation progress notes offering "observations", but no diagnostic or final findings.

It is interesting to note, in the Progress notes of Alexander C., a therapist describes "humped" as "(kissing)". Absolutely no forensic expert testimony was used to explain the lack of findings in the Record, or to offer an explanation of the record that could support a conclusion that testing was done to validate the allegations. The medical record is devoid of any substantive proof that Alexander C. was abused. All of the statements contained in the medical record concerning the alleged sexual abuse were provided by the maternal aunt, Denise Powell, who herself had not personally observed anything alleged in the petition. No progress notes, or any other document is found in the record to support the contention that Alexander C. was sexually abused.

Medical Record of Anthony W.: Exhibit 1, in Evidence: The records proffered by the County concerning Anthony W., which were entered into evidence, are equally devoid of any substantive findings of sexual abuse. No expert testimony was used and again, the record in evidence relates that the maternal aunt, Denise Powell, provided the information. Further, the evidence found in the

Family Court file, and made part of the record on appeal, reflects only two pages of "intake" notes concerning Anthony W., and nothing more. No progress notes, or any other documents are found in the record to support the contention that Anthony W. was sexually abused.

On Direct examination by the County Attorney, Lesk, the intern psychologist, and not an expert in the field of abuse, related that she saw Anthony W. on a regular weekly basis, but when asked about the nature of the conversation, defense counsel objected. The County Attorney admitted to the Court that Lesk was not being offered as an expert. Her testimony subsequently ended.

Thereafter the County rested its case against the Respondent.

The Court reserved decision on the Law Guardian's motion for a directed verdict on the issue of neglect based on the evidence and the *in camera* interview.

The Court also denied Respondent Antonio C.'s motion to dismiss.

The Respondent called Leslie H. as his first witness.

Leslie H. testified that Anthony W. is her first born son and that the infants father was Adrian Walker. She testified that Antonio C. got along well with her son Anthony W. and subsequently she and Antonio had two other children, Jacqueline C. and Alexander C..

Anthony W. reacted to Alexander C. by punching him in the stomach. The jealousy continued to the point of Anthony burning Alex on the leg with an iron.

Leslie H. further testified that Antonio C. was never alone with Anthony W., and she never saw any contact between Anthony and Antonio C. She indicated

that Antonio C. was in jail from February 1994 to October 1994 and that he was not present in the household with the children in August 1994.

In September 1994 Leslie H. spent seven days in jail and during that time period she gave her children to Denise Powell to watch over. Leslie H. indicated that her sister Denise Powell first advised her of the alleged sexual improprieties between Anthony W. and Antonio C. in January 1995. She indicated her sister did not mention any allegations concerning her son Alex C. or Jacqueline C. Denise told Leslie H. that Anthony told her that he saw green and white stuff coming out of Antonio's private part and he was making all types of faces. When Leslie H. Confronted Antonio C. he allegedly started to cry and broke down. Antonio C. never told Leslie H. that he had touched Anthony W.

Leslie H. indicated she used the word "hump" and used it in the context that when Anthony W. was doing something to Alex. C., like being on top of him, she would say, "was he humping you?" Leslie indicated that neither Anthony W. nor Alex C. ever indicated to her that Antonio C. was "humping" them.

The witness Leslie H. was then cross-examination by the County Attorney.

Leslie H. admitted that in January '95, Anthony W. told her that he saw "Green and white stuff...coming out of Tony's private parts" in the presence of Denise Powell, her husband Greg Powell and the other children. Leslie H. also indicated that Anthony was exposed to X-rated movies on one occasion when she caught them watching on TV a man ejaculating on a woman. That he viewed this movie at 1 am in the morning. She testified that when Anthony told her Antonio had seen white stuff

come out of Antonio's penis she believed he was lying.

Leslie H. further testified that Antonio had her arrested because of an alleged stabbing incident which she denied took place. The witness also admitted to being arrested for using the credit card of another person, a homemaker that had been stolen by her friend Carmella Blunt. She admitted to a long history of domestic violence with Antonio C. and an incident where knives were used in the presence of the children during a domestic.

The record reveals the next time the matter was on before the Court was May 18, 1995.

Leslie H. admitted she was not married to Antonio C. but had lived with him for six years. She indicated that the children were never left with Antonio C. alone because all of her family lived with her, and she had a friend, Carmella Blunt, residing with her. The witness admitted to being arrested for stabbing Antonio C., but proffered that she did not do it. She admitted that she had admitted to this Court recently to repeated acts (6) of domestic violence between she and Antonio C.

The witness testified to giving false information to the police in the form of an affidavit and lying to them because she was angry. Leslie H. denied she told the Court she picked up a knife only in self-defense and that Antonio C. was the one who initiated that dispute. She further testified that with regard to the knife incident, she smacked Antonio C., provoked him and told him to pick up the knife. Further, she testified that she observed both Alex and Anthony (respectively, 4 and 6 years of age at the time of the occurrence), engaging in what she described as Humping each other, that this behavior started when Antonio C. was in jail, and that it

commenced when Leslie H. had girl living with her. Leslie indicated that she did not seek professional help with regard to the acting out she described as humping, except that she did ask for assistance from the Department of Child Protective Services.

Leslie H. advised the Court she never told Eubanks[5] that Antonio C.'s act of touching the children on their penises was a sexual act. Rather, that Antonio C. "touched them, *up to the potty to let them use the bathroom*. To use the bathroom". Further, she indicated that the State Worker, Eubanks, "changed everything around". Leslie indicated she kept an intact relationship with Antonio C. and that "he was a good father". She indicated that since Antonio C. was in jail she had another male living with her in the house, downstairs. When asked if Antonio C. was arrested for the sale of a controlled substance, Leslie indicated "I don't know that. I never saw it in the home". She admitted that Antonio C. "never used drugs".

Examination by the Law Guardian then went forward.

Leslie H. testified that on one occasion she and the children were in bed alone. She got up to go to the bathroom and when she returned the children, Anthony W. and Alexander C., had turned the television to an X-rated channel and were witnessing a man ejaculating all over a lady. The Court commented, "I don't buy it". She further reiterated that she never saw Antonio C., "doing anything with Alex's penis, other than helping him being potty trained" (Sic) and that she never saw Antonio C. pull Alex's pants down and bite him on the

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[5] Winifred Jeanne Eubanks, is a State Worker II.

buttocks. Further, that never saw Antonio C. straddle Alex. She further acknowledged that Anthony W. calls Antonio C. "poppy", when he is with her and Antonio, but calls him "Tony" when he is with Denise Powell.

Leslie H. testified that Denise Powell now has temporary custody of the children, and that for the past seven years also had visitation with the children and was caretaker of the children wen Leslie was in jail. She further indicated that she pled guilty before the Court for spanking her children on his legs. But that he had no marks as a result of it and again reiterated that Antonio C. was an excellent father.

There after, the counsel for Antonio C. re-examined Leslie H.

Leslie testified that Anthony W. liked Antonio C., and that he never complained of any bad conduct of Antonio C., and particularly never spoke to her about any sexual conduct.

Leslie further indicated that Anthony W. said to her that "I'm sorry for lying what daddy and you caught us doing " and that Denise Powell never liked Antonio C. and that the relationship never improved.

Thereafter Leslie indicated on one occasion while Antonio C. was in jail, she had just removed the children from the Tub and she caught Anthony W. with his mouth on Alex's privates and she stopped it. This occurred in August of 1994 and at that time Antonio C. had been in Jail since February 1994.

Antonio C. testified on his behalf.

Antonio testified that he began his relationship with Leslie H. in 1989 and at that time she had one child, Anthony W. When the relationship began, Leslie H. was living in one room with Anthony W. When she and

Antonio C. began to live together, Antonio C. moved them into an apartment. He indicated he supported both Leslie H. and Anthony W. from 1989 to the present. Subsequently, he and Leslie H. had two additional children, Alexander and Jacqueline. Antonio testified that he would correct Anthony W., but that the relationship never changed. He indicated that Anthony W. was jealous of Alexander. Antonio further related that he did not get along with Denise Powell and, on occasion Denise Powell referred to Antonio as a "White cracker". When Alex C. was born, Denise attempted to take Alexander C. and Antonio C. objected and told her she needed his permission to remove his child. She again referred to him as a "white cracker, baldheaded".

Antonio testified he entered jail in February 1994 for possession of narcotics. He received an eight-month sentence. While in jail, Leslie H. brought the children to see him every week. He testified that he never engaged in any type of oral sex or sodomy with Anthony and never with Alexander C., whom he testified was "his favorite boy". When asked what the boys were doing, Antonio indicated that Leslie told him Anthony W. had is mouth on Alexander C.'s privates.

The DSS, by the Deputy County Attorney, cross-examined Antonio C.

Antonio C. denied that Powell indicated to him that she did not like certain acts he was doing to the children. He testified that he is employed as a Deli clerk at the Rene Deli in Westbury, New York. He further testified that he was not convicted of selling cocaine to another, or of selling cocaine in excess of a half an ounce to another. However, Antonio C. did admit to being convicted of driving while impaired. Antonio did

indicate he was convicted of possessing a controlled substance and that he never straddled Anthony or Alexander, nor did he bite them on the buttocks.

The Law Guardian then cross-examined Antonio C.

Antonio indicated his nationality was Cuban and Italian. He further testified that it was not the *custom* of his family in Cuba to bite the children on their buttocks. Antonio indicated that he changed his daughter Jacqueline's diaper many times and that he had been alone with the children since they were born.

On redirect by his attorney, Antonio C. indicated that Leslie H. did leave him alone with the children, but that her brother was present. However, in the six years since they were together he admitted to being alone with the children.

The next witness called by the Respondent was Anne Pettway.

Pettway testified Antonio C. is married to her sister, Bessie C[6]. She indicated that Antonio C. and all of his children, Alexander and Jacqueline C. have been to her house for visits. Pettway revealed when the children were with her at her house they never mentioned to her that they were afraid of Antonio C. She further disclosed there were times when Antonio C. would bring the children to her house alone and without Leslie H.

The Court thereafter asked Antonio C. when he was incarcerated and he responded February 18, 1994 to October 1994.

All sides rested their case.

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[6] Prior to his relationship with Leslie H., Antonio C. had a child with Bessie C. *that he continues to see to this date.*

The Court thereafter heard arguments. The Court reserved its decision.

DECISION & ORDER

On July 11, 1995 the Family Court rendered a written decision and order.

In its decision, the Family Court indicated the legal issues to be determined are: whether or not the child's out of Court statements to the maternal aunt and caseworker are corroborated and, if so, whether the totality of the credible evidence is sufficient to sustain a finding of abuse.

After reviewing its interpretation of the events of the Hearing, the Court found, "the child's out of Court statements have been sufficiently corroborated and that considering all the credible evidence an affirmative finding of abuse and neglect shall be entered herein against the respondent, Antonio C. ". The Dispositional hearing was adjourned to October 25, 1995.

On October 25, 1995 Antonio C.'s attorney was granted an application to be relieved as counsel. Antonio C. had retained another attorney who forwarded an affidavit to the Court. The matter was put over to December 12, 1995 for Disposition.

On December 12, 1995 the Court received notification from the new attorney for Antonio C.. The notification indicated Antonio C. did not want him as an attorney. The Court gave Antonio C. to January 2, 1996 for Disposition.

On January 2, 1996 Antonio C. obtained another attorney who was given to February 8, 1996 to prepare for the Dispositional hearing.

On February 8, 1996 Antonio C.'s attorney was ill and the matter was put over to February 20, 1996.

On February 20, 1996 the Dispositional Hearing took place before the Court.

DISPOSITIONAL HEARING

On February 20, 1996 the Dispositional Hearing went forward before the Court. A report from the Department of Probation was marked into evidence as Petitioner' 1. The probation report contained recommendations that the children be adjudicated abused and neglected and that they remain in DSS custody. After the Probation Report was entered into evidence the Petitioner rested his case. The Probation Report contained a forensic Report from Tracy Grossman, Ph.D., a consulting Psychologist. Dr. Grossman recommended:

> "...At this point in time, any contact between Anthony W., Alexander C. and Jacqueline C. and their parents should be professionally supervised, time limited, and carefully monitored. Any increase in visitation for either Leslie H. or Antonio C. should be contingent on genuine participation in the treatment prescribed."

The probation report parroted Dr. Grossman's recommendations.

The Respondent Antonio C. called Dr. Rosemary O'Regan, a clinical psychologist from South Nassau Community Hospital to testify on his behalf. Dr.

O'Regan testified that she supervised the interns who did therapy with Antonio C.'s children. Dr. O'Regan was asked if the children showed signs of trauma or abuse. She testified that she "supervised the students who did the actual therapy, and we're really not a forensic unit where we would make those determinations."

The next witness on behalf of Antonio C. was Betsy C. She is married to Antonio C., but has been separated from him for over five years. The have a child together. She characterized Antonio as a caring and loving father who did not abuse his children.

Antonio C. thereafter testified in his own behalf.

The record continues on February 27, 1996. The Respondent called Gregory Powell as his next witness . Powell is the foster father the Antonio C., and the wife of Denise Powell. Respondent's new attorney asked questions that were objected to by counsel and sustained by the court. Counsel for the DSS suggested Respondent's counsel make an offer of proof with regard to the questions. Co-respondent Leslie H.'s counsel began to question Powell. Counsel for the infant's objected to the questions. The Court sustained the objections. After Leslie H.'s counsel completed her questioning, the court turned to Antonio C.'s counsel and asked:

Q."Do you have any redirect that is going to be appropriate?" At that point Counsel asked the Court to accept an "*Offer of Proof*" with regard to the question, and made that application to the Court.

The Court admonished:

> "From what I have heard, this is more of a fishing expedition than anything else. *I'm not going to permit it in* ".

Thereafter Respondent Antonio C.'s attorney rested.

Co-Respondent Leslie H. presented her first witness, Marilyn Haviker, a caseworker from the Department of Social services. The caseworker told the court that during a supervised visit when the children found out Antonio C. was with Leslie H. they tried to see him. Both Anthony W. and Alexander C. requested to see the Respondent.

The Dispositional Hearing was put over to March 7, 1996 for closing remarks.

On March 7, 1996 summations for the Dispositional Hearing took place before the Court. Mr. Chan was to have no visitation with the children. and enter a therapy program for sex abusers under the direction of the DSS.

To this date, Antonio C. *has not seen his children.*

REASONS FOR GRANTING THE WRIT

POINT I

The Family Court of New York State, County of Nassau, violated Petitioner's right to equal protection and due process guaranteed to him in Article 1 §§ 6 & 11 of the New York State Constitution and the 5th, 6th and 14th amendments of the United States Constitution when it did not permit him to confront and question a witness.

The Law Guardian *was permitted* to ask the child questions during the *in camera* hearing, in the absence of

Appellants attorney. This occurred only *after* the Court was unable to elicit information during its *in camera* interview. What is more, counsel for Antonio C. *was not permitted to ask questions*, or cross-examine the witness, in clear violation of his right to confrontation and due process. See, *Maryland v. Craig*, supra; McKinney's N.Y. Const. Art. V. 1., § 6. In addition, he was not even permitted to review the transcript of the Hearing. That cross-examination is intrinsic to the fact-finding process is beyond dispute. Indeed, it has been characterized "as the greatest legal engine ever invented for the discovery of truth." (Fisch, *New York Evidence* § 38 (2nd Ed. 1977) (quoting 5 Wigmore, *Evidence* § 1367 (3rd Ed. 1940), and is an essential element of *due process* and *fair treatment*. *Pointer v. Texas*, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed.2nd 923 (1965). Of course, the permissible manner and tone of cross-examination may depend on the age and abilities of the child and is subject to the sound *discretion* of the trial judge. However, in the case before this Honorable Court, to the extent the Family Court permitted the Law Guardian to cross-examine the infant, using leading questions, after the Court failed to elicit responsive answers, it abused its discretion, and deprived Antonio C. of his constitutional rights by not allowing Antonio C.'s attorney the same opportunity.

In the case before the Family Court, the Respondent Antonio C. was not able to test Anthony W.'s veracity. See, *Matter of Christina F.*, 74 N.Y.2d 532, 548 N.E.2d 1294, 549 N.Y.S.2d 643 (Court of Appeals, November 30, 1989), holding that in a child protective proceeding, where in a child's out-of-Court statements describing sexual abuse by her father may be corroborated by the child's later cross-examined but

unsworn in-Court testimony so as to support a finding of abuse. The Respondent was not able to test the accuracy of Anthony W.'s perceptions. See, *Matter of Christina*, Supra. The Respondent was not able to test Anthony W.'s ability to recollect past events. See, *Matter of Christina*, Supra.

In the *Matter of Christina*, the Court proceeding under Article 10 of the Family Court Act concerned a five (5) year old girl. In the case before the Family Court, the proceeding under Article 10 of the Family Court Act concerns a seven (7) year old boy, a (4) year old boy and a (2) year old girl.

In the *Matter of Christina*, the in camera examination was conducted outside both parents presence, though their counsel attended and was permitted to cross examine the child. In the case before the Family Court, the *in camera* examination was conducted outside both parents presence and their counsel was *excluded* from the proceeding. What is more, in violation of Respondent's Right of Due Process and Right to Confront witnesses, the Law Guardian was present for the *in camera* examination and when the Court failed to obtain any information from the infant, it permitted the Law Guardian to conduct a cross-examination of the infant, outside the presence of the Respondents counsel. The gravity of this deprivation of a basic Constitutional Right underscores the urgency of this Court to review by granting the Writ. See, U.S.C.A. Const. Amend.5

A. THE COURT IMPROPERLY DEPRIVED ANTONIO C. OF HIS CHILDREN.

What is shocking and frightful is the fact that the State has slammed its judicial gavel and terminated the Parent-Child relationship with not only uncorroborated evidence, but also knowing that one of its own State Workers, assigned to investigate the claims of sexual abuse and physical abuse, found no medical evidence to support the allegations.

This enlightening information was only revealed on cross-examination of a State Worker at the fact-finding hearing. She admitted:

> That she referred the children to sex abuse counseling, but a validator never confirmed sex abuse, and That during a visit to the medical clinic no signs of physical abuse was found.

Antonio C. has been deprived of even talking to his children for over four years because of the sexual abuse finding by the Family Court. The Supreme Court of the United States has held that the "deprivation of a right to see and talk to your children " is a further assault on ..ones... right of due process." See, *Santosky v. Kramer, et. al.*, 455 U.S. 745, 102 S. Ct. 1388) (1982), requiring Clear and Convincing evidence before a State may *sever* completely the rights of parents in their natural child. In the case before this Honorable Court, the standard used to sever the parent child relationship, thus far depriving him of seeing and talking to his children, was merely, the preponderance of the credible evidence. Clearly, a further assault on Antonio C.'s right of due process.

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the opinion and judgment of the Appellate division.

Respectfully submitted,
JOSEPH A. HANSHE
Fager & Amsler
90 Merrick Ave. Ste. 701
East Meadow, New York 11554
(516) 794-7340
Counsel of Record and attorney for the Petitioner Antonio C. (anonymous)

December 5, 2000

APPENDIX A

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

-710 N.Y.S. 2d 530-

GUY JAMES MANGANO, p.j.
WILLIAM C. THOMPSON
GABRIEL M. KRAUSMAN
SANDRA J. FEUERSTEIN, JJ.

1996-03790
1996-03791
1997-08646
1997-09030

In the Matter of C. (Anonymous) Children.
Department of Social Services, respondent;
Leslie H. (Anonymous), et. Al., appellants.

Joseph Arthur Hanshe, East Meadow, N.Y. for appellant Antonio C.

Anne M. Serby, Long Beach, N.Y., for appellant Leslie H.

Lisa M. Comeau, New York, N.Y., Law Guardian for the children.

In an abuse and neglect proceeding pursuant to Family Court Act article 10, the father appeals (1) from an order of the Family Court, Nassau county (Pudalov, J.),

dated July 11, 1995, which, after a hearing, found that he had abused and neglected the subject children, (2), as limited by his brief, from so much of a dispositional order of the same court entered March 19, 1996, as, after a hearing, *inter alia*, placed the children in the custody of the Nassau County Department of Social Services, (3), as limited by his brief, from so much of the order of the same court dated July 28, 1997, as denied his motion, *inter alia*, to vacate the order dated July 11, 1995, and (4) from an order of the same court, dated July 2, 1997, which extended placement of the subject children for one year until July 2, 1998, and the mother Leslie H. separately appeals from the order dated July 2, 1997.

ORDERED that the appeals from the order extending placement of the children for one year until July 2, 1998, are dismissed as academic, without costs or disbursements; and it is further,

ORDERED that the order dated July 11, 1995, is affirmed, without costs or disbursements; and it is further,

ORDERED that the order ente4red March 19, 1996, is affirmed; without costs or disbursements; and it is further,

ORDERED that the order dated July 28, 1997, is affirmed insofar as appealed from, without costs or disbursements.

The appeal by the mother and the father from so

much of the order as extended placement of the children for one year until July 2, 1998, must be dismissed as academic because that order expired by its own terms and has been replaced by subsequent orders extending placement (See, Matter of Commissioner of Social Servs. [Octavia S.J v Rozella s., 255 AD2d 316; *Matter of Lateesha J. [Michelle J.], 252 AD2d 502; Matter of the Commissioner of Social Servs. [Jessica and Felix M.] v Anne F., 225 AD2d 620; Matter of New York City Dept. of Social Servs. [Kalisha A.] v Diognes T., 208 AD2d 844; Matter of F. Children [Gilna L.] 199 AD2d 810.* Any corrective measures which this court might have taken with respect to the order appealed from would have no practical effect.

Moreover, contrary to the father's contention, the county proved by a preponderance of the evidence that he sexually abused the children *(see, Matter of Tanya T. [Steven U.] 252 AD2d 677).*

The father's remaining contentions are without merit.

MANGANO, P.J., THOMPSON, KRAUSMAN and FEUERSTEIN, jj., concur.

ENTER:
James Edward Pelzer
Clerk

June 12, 2000

MATTER OF C. (ANONYMOUS) CHILDREN

APPENDIX B

FAMILY COURT OF THE STATE OF NEW YORK
NASSAU COUNTY

----------X

In the Matter of a Proceeding Under
Article 10 of the Family court Act
Relating to

DEPARTMENT OF SOCIAL SERVICE
obo JACQUELINE CHAN aka
JACQUELYN CHAN, b. 2/9/93

A child under Eighteen Years of
Age Alleged to be an Abused and
Neglected Child

Petitioner - Nassau County Dept.
of Social Services by Janet
Roscoe-Strebel, Asst. Dir.,
Child Protective Services

RESPONDENT - ANTONIO CHAN,
Father

DECISION AND ORDER

Index No.
N33-95

----------X

----------X

In the Matter of a Proceeding Under
Article 10 of the Family court Act
Relating to

DEPARTMENT OF SOCIAL SERVICE
obo ANTHONY WALKER, b. 2/3/88
A child under Eighteen Years of Age

DECISION AND ORDER

Index No.
N34-95

Alleged to be an Abused and
Neglected Child

Petitioner - Nassau County Dept. of
Social Services by Janet Roscoe-Strebel,
Asst. Dir., Child Protective Services

RESPONDENT - ANTONIO CHAN,
Step-Father

----------X

----------X

In the Matter of a Proceeding Under
Article 10 of the Family court Act
Relating to

DEPARTMENT OF SOCIAL SERVICE
obo ALEXANDER CHAN, b. 4/27/90

A child under Eighteen Years of Age
Alleged to be an Abused and
Neglected Child

DECISION AND ORDER

Index No.
N35-95

Petitioner - Nassau County Dept. of
Social Services by Janet Roscoe-Strebel,
Asst. Dir., Child Protective Services

RESPONDENT - ANTONIO CHAN,
Father

----------X

Before the Court, as the subject of abuse and neglect petitions, are the children: ANTHONY WALKER, d.o.b. 2/3/88; ALEXANDER CHAN, d.o.b. 4/27/90; and

JACQUELINE CHAN, d.o.b. 2/9/93. The respondent, ANTONIO CHAN, is the step-father of ANTHONY and the father of ALEXANDER and JACQUELINE. The numerous allegations the petitions concern, interalia, sexual contact between the respondent, ANTONIO CHAN, and the child, ANTHONY WALKER. There are also other allegations, some concerning domestic violence in the presence of the children, and others concerning neglect; i.e., failure to administer Ritalin to ANTHONY and failure to maintain the home in a sanitary manner.

The Court held a hearing, over several days, and heard testimony from numerous witnesses. The oldest child, ANTHONY, testified in camera. Thereafter, testimony was received from the maternal aunt, DENISE POWELL; Department of Social Services caseworker, WINIFRED EUBANKS; therapist, STEPHANIE LESK; the mother, LESLIE HARGROVE; the respondent, ANTONIO CHAN; and the respondent's sister-in-law, ANN PETTEWAY.

The child, ANTHONY, testified in chambers that he saw the respondent, ANTONIO CHAN, "humping" his half-brother, ALEX, and that he knew what "humping" was because the respondent, ANTONIO CHAN "humps" mommy. ANTONIO also told the Court that the respondent, ANTONIO CHAN, put his penis in ANTHONY'S mouth and "he peed in my mouth." ANTHONY said the respondent, ANTONIO CHAN, did this to him more than once. ANTHONY also testified that the respondent, ANTONIO CHAN, did the same to his half-brother, ALEX, and half-sister, JACQUELINE, as well as touching JACQUELINE between her legs with his fingers and making her cry.

The child, ANTHONY, testified that he pushed the

respondent, ANTONIO CHAN, off of him and told ANTONIO CHAN to not do it to him again, but he did.

The maternal aunt, DENISE POWELL, testified that she had witnessed domestic violence between the respondent, ANTONIO CHAN, and the mother, LESLIE HARGROVE. She also testified that ALEX and ANTHONY both told her that the respondent, ANTONIO CHAN was "humping" them. The witness continued that at home she saw the two boys "humping" pillows simulating sexual intercourse. The children told the witness that this is what the respondent had been doing to them. The child, ANTHONY, told the witness that the respondent, ANTONIO CHAN, put his "thing" (penis) in ANTHONY'S mouth and "peed" in ANTHONY'S mouth.

The Child Protective Services worker, WINIFRED EUBANKS, testified that she interviewed both boys as well as the mother and the respondent, ANTONIO CHAN. The testimony of this witness was consistent with that of the child, ANTHONY. The CPS worker testified that the Child, ANTHONY, told her that the respondent, ANTONIO CHAN, put his penis in ANTHONY'S mouth and "peed" in ANTHONY'S mouth.

The witness also testified that the child, ANTHONY, visually explained what the respondent, ANTONIO CHAN, did to him by using his teddy bear as illustration. The child put the legs of the teddy bear around his neck and placed his mouth on the bear between the bear's legs. ANTHONY told the worker that he doesn't like it when the respondent, ANTONIO CHAN, does this with him and "pees" "this white stuff"

in the child's mouth. The child also told the worker he saw the respondent, ANTONIO CHAN, put his fingers inside JACQUELINE, between her legs.

The next witness, STEPHANIE LESK, was not qualified as an expert, but testified that she has been ANTHONY'S therapist at South Nassau Community Hospital. This witness meets one time per week, since March, 1995, with ANTHONY. The therapist testified that at least one time per session the child, ANTHONY, makes some reference to the sexual abuse.

The mother of the children, LESLIE HARGROVE, testified on behalf of the respondent, ANTONIO CHAN. She testified that when she and ANTHONY first moved in with the respondent, ANTONIO CHAN, before the births of their two children, ALEX and JACQUELINE, she did not trust ANTONIO. The mother testified that her sister, DENISE POWELL, was often at their home and often cared for the children. The witness told the court of several times that she and the respondent, ANTONIO CHAN, have each spent in jail since 1994. The mother indicated that the first she heard of the allegations of sexual abuse was when she got out of jail in January 1995. She told the court that ANTONIO CHAN broke down and cried when she discussed it with him, but that he never admitted touching the children.

On cross examination, the mother, LESLIE HARGROVE, tried to explain the children's allegations against the respondent, ANTONIO CHAN, by saying the children saw a man ejaculate onto a woman on television on channel 34 or 35. The mother admitted that she was arrested for stabbing the respondent, ANTONIO CHAN, but that ANTONIO lied in the criminal proceedings and that she lies when she's hurt or angry. She also admitted

that she was convicted for stealing and using the credit card of a homemaker that was provided to help the mother with her children. Finally, the mother also admitted a long history of domestic violence with the respondent, ANTONIO CHAN, in the presence of the children, and that the respondent, ANTONIO CHAN, did pull a knife on her in front of the children.

The respondent, ANTONIO CHAN, testified on his own behalf. He admitted being convicted on drug charges and a DWI. He denies all the allegations in the petition except the allegations concerning domestic violence. He claims, as did the mother, that the maternal aunt, DENISE POWELL, never liked CHAN and, therefore, the court should not believe her allegations.

The final witness was the respondent's sister-in-law, ANN PETTIWAY. She testified that the children have been to her home and that she has observed the children with the respondent, ANTONIO CHAN. ANN PETTIWAY testified that the children never appeared to be afraid of the respondent.

The legal issues to be determined in this matter are whether or not the child's out of court statements to the maternal aunt and caseworker are corroborated and, if so, whether the totality of the credible evidence is sufficient to sustain a finding of abuse.

Family Court Act §1046 (a)(vi) provides that corroboration of out of court statements may be accomplished "by any other evidence tending to support the reliability of the previous statements...". Subsequent case law assists the Court in determining the types of evidence that the Court may use to find whether or not out of court statements have been sufficiently corroborated.

Some examples of corroboration are: medial evidence, *MATTER OF KIMBERLY K.*, 123 A.D.2d 874, 507 N.Y.S. 2d 654; validator testimony, *MATTER OF NICOLE V.*, 71 N.Y. 2d 112, 524 N.Y.S. 2d 19; evidence that the child has a sexually transmitted disease, *MATTER OF TARA H.*, 129 Misc. 2d 508, 494 N.Y.S. 2d 953; evidence that the child has become pregnant, *MATTER OF JOLI M.*, 131 Misc. 2d 1088, 502 N.Y.S.2d 653; in-court sworn statements of the child, *MATTER OF MAYRA T.*, 137 Misc. 2d 253, 520 N.Y.S.2d 295; or cross examined, unsworn, in camera statements of the child, *MATTER OF CHRISTINA F.*, 74 N.Y. 2d 532, 549 N.Y.S.2d 643.

The maternal aunt, DENISE POWELL, presents as a very credible individual who has created a stable and caring environment for her niece and nephews. This witness is the person who has been a primary caretaker not only while the mother was in jail but also for other substantial periods of time. MS. POWELL has been the person that the children could rely on to take them to all the necessary evaluations and continued therapy sessions.

The caseworker, WINIFRED EUBANKS, is also very credible. The testimony given by this witness is very consistent with the testimony offered by DENISE POWELL and the child, ANTHONY.

Although the child, ANTHONY, appeared to be reluctant to speak initially, even in chambers, he eventually opened up and told the Court about the many "nasty" things done to him and his siblings by the respondent, ANTONIO CHAN. The child was subject to examination by both the Court and the law Guardian.

The testimony of each of these three witnesses was

very credible and consistent.

The testimony of the mother, LESLIE HARGROVE, who testified on behalf of the respondent, ANTONIO CHAN, and the testimony of the respondent himself, was not credible except wherein both parties testified to the domestic violence that has taken place in front of the children. The respondent's own witness claimed that the respondent lies and that she also lies when she feels she is under pressure. The testimony of the respondent's witnesses does not convince the court that any weight should be given to their testimony and this does nothing to rebut the evidence presented by the Deputy County Attorney.

Based upon all of the foregoing, the court finds that the child's out of Court statements have been sufficiently corroborated and that considering all the credible evidence an affirmative finding of abuse and neglect shall be entered herein against the respondent, ANTONIO CHAN.

The respondent is referred to the Probation Department for the purpose of initiating an investigation and report prior to the dispositional hearing in this matter. Said disposition is adjourned to October 25, 1995.

This constitutes the decision and order of the Court.

Dated: Westbury, New York
July 11, 1995

ENTER:

/S/
HON. MURRAY PUDALOV, J.F.C.

APPENDIX C

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on The twelfth day of September 2000.

PRESENT, HON. JUDITH S. KAYE, *chief Judge, presiding.*

2-10 Mo. No. 787
In the Matter of C. (Anonymous) Children.

Department of Social Services,
Respondent;
Leslie H. (Anonymous),
Respondent,
Antonio c. (anonymous),
Appellant.

A motion for leave to appeal to the court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed that part of the July 28, 1997 Family court order that denied a motion to vacate a prior Family Court order, be and the same hereby is dismissed upon the ground that such portion of the order does not finally

determine the proceeding within the meaning of the Constitution; and it is

ORDERED, that the said motion for leave to appeal otherwise be and the same hereby is denied.

/s/ STUART M. COHEN

Stuart M. Cohen
Clerk of the Court